

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARVIN GLENN,

Petitioner,

v.

CASE NO. 2:14-CV-11908

HONORABLE SEAN F. COX

UNITED STATES DISTRICT JUDGE

DAVE BERGH,

Respondent,

**ORDER (1) GRANTING PETITIONER'S MOTION TO AMEND PETITION FOR
WRIT OF HABEAS CORPUS AND (2) ORDERING THAT THE AMENDED
PETITION BE SERVED UPON THE RESPONDENT AND THE MICHIGAN
ATTORNEY GENERAL**

Petitioner filed a petition for writ of habeas corpus with this Court on May 9, 2014, seeking the issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his application, filed *pro se*, petitioner challenged his convictions for assault with intent to rob while unarmed, resisting and obstructing a police officer, and being a fourth felony habitual offender. Respondent's answer to the petition for writ of habeas corpus is due on November 20, 2014.

Petitioner has now filed a motion to amend the petition for writ of habeas corpus, in which he seeks to advance additional legal arguments in support of the claims raised in his original habeas petition. For the reasons stated below, the motion to amend the petition for writ of habeas corpus is **GRANTED**. The Court will further order the Clerk of the Court to serve a copy of the amended petition for writ of habeas corpus upon the Respondent and the

Michigan Attorney General.

I. DISCUSSION

The decision to grant or deny a motion to amend a habeas petition is within the discretion of the district court. *Clemmons v. Delo*, 177 F. 3d 680, 686 (8th Cir. 1999); *citing to* Fed.R.Civ.P. Rule 15. Notice and substantial prejudice to the opposing party are the critical factors in determining whether an amendment to a habeas petition should be granted. *Coe v. Bell*, 161 F. 3d 320, 341-342 (6th Cir. 1998). A motion to amend a habeas petition may be denied when it has been unduly delayed and when allowing the motion would prejudice the nonmovant. *Smith v. Angelone*, 111 F. 3d 1126, 1134 (4th Cir. 1997)(internal citations ommitted). However, delay by itself is not sufficient to deny a motion to amend. *Coe*, 161 F. 3d at 342.

The Court will permit petitioner to amend his habeas petition. Petitioner's proposed amended habeas petition alleges additional legal support for the claims that he raised in his original petition, was not the subject of undue delay, and would not unduly prejudice respondent. Accordingly, the motion to amend should be granted. *See Riley v. Taylor*, 62 F. 3d 86, 92 (3rd Cir. 1995). Additionally, because petitioner has filed this motion to amend the petition before the Court has adjudicated the issues in his petition, the motion to amend should be granted. *Stewart v. Angelone*, 186 F.R.D. 342, 343 (E.D. Va. 1999). Accordingly, the Court will permit petitioner to amend his petition.

The Court will further order that the Clerk of the Court serve a copy of the Amended Petition for Writ of Habeas Corpus filed June 26, 2014 [This Court's Dkt. Entry # 6] and a

copy of this Order on Respondent and on the Attorney General for the State of Michigan by first class mail as provided in Rule 4 of the Rules Governing § 2254 Cases, Rule 4. *See Coffee v. Harry*, 2005 WL 1861943, * 2 (E.D. Mich. August 2, 2005).

II. ORDER

IT IS HEREBY ORDERED that the Motion to Amend the Petition for Writ of Habeas Corpus [Dkt. # 5] is GRANTED.

IT IS FURTHER ORDERED that the Clerk of the Court serve a copy of the amended petition for writ of habeas corpus filed on June 26, 2014 [Dkt. Entry # 6] and a copy of this Order on respondent and the Attorney General by first class mail.

Dated: July 25, 2014

S/ Sean F. Cox

Sean F. Cox

U. S. District Judge

I hereby certify that on July 25, 2014, the foregoing document was served on counsel of record via electronic means and upon Marvin Glenn via First Class mail at the address below:

MARVIN GLENN
195862
THUMB CORRECTIONAL FACILITY
3225 JOHN CONLEY DRIVE
LAPEER, MI 48446

S/ Jennifer McCoy

Case Manager